80-1363

Office-Supreme Court, U.S.
FILED
FEB 12 1981
ALEXANDER L. STEVAS,
CLERK

No. . . . . .

**SUPREME COURT
OF THE
UNITED STATES
OCTOBER TERM, 1980**

MARJORIE WILLIAMSON, **Petitioner**

VS.

**JOHN KIMBROUGH
ZONING ADMINISTRATOR
CITY OF DALLAS, TEXAS** **Respondent**

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FIFTH CIRCUIT

**MARJORIE WILLIAMSON, PRO-SE
4923 Gaston Avenue
Dallas, Texas 75214
(214) 823-5945**

QUESTIONS PRESENTED FOR REVIEW

1- Are the orders in Appeal No. 79–3569 void, Judgment August 7, 1980; Order August 7, 1980, because the Title of Appellee in the caption is Etc., a non-suable entity?

2- Whether the "affirmed" in the Judgment August 7, 1980 in No. 79–3569, Fifth Circuit showed a Court unaware that no judgment was entered in District Court record CA3–79–1002 H?

3- Whether the order signed August 20, 1980 by two appellate Judges when the third of the panel who signed the judgment No. 79-3569 August 7, 1980 was on vacation is void, because it was not signed by an appellate panel and, because it denied a Motion filed August 11, 1980 in the Summary Calendar Record No. 79-3569, not in District Court Record CA3–79–1002 H?

4- Whether in entering the order August 20, 1980 denying a Motion filed in Summary Calendar Record No. 79–3569, two appellate Judges entered a void order and entered a decision contrary to the applicable decisions of this Court in Monell v. New York City Department of Social Services 98 S. Ct. 2018, decided June 6, 1978 and in Owen v. City of Independence, Missouri decided April 16, 1980, 100 S. Ct. 1398, and made no ruling on District Court record No. CA 3–79–1002 H which was not shown filed in the Summary Calendar Record?

5- Whether it is significant that No. 79–3569 was put on the Summary Calendar Record July 30, 1980, after the decision June 20, 1980 in Douthit v. Jones 619 F 2d 527, Fifth Circuit Court of Appeals, a case which showed the Fifth Circuit was aware of recent decisions involving U.S.C.A. 42 § 1983?

6- Whether suits for damages brought under U.S.C.A. 28 § 1331 and the 14 Amendment against municipalities have been entertained in Federal Courts in cases involving deprivation of property without due process of law before the decisions in Monell 98 S. Ct. 2018 and Owen 100 S. Ct. 1398?

7- In any case in which U.S.C.A. 28 § 1331 and U.S.C.A. 42 § 1983 are cited should the United States Courts review the facts?

8- Does District Court Record show CA 3–79–1002 H was brought under the 14 Amendment of the Constitution of the United States?

9- Does the District Court Record CA 3–79–1002 H show that the factual allegations cannot be disputed because there was a zoning hearing following which Petitioner and three others were denied an appeal to the City Council, City of Dallas, Texas, by the Zoning Administrator, City of Dallas, Texas?

10- Does the fact that the Zoning Administrator set a hearing and then denied the right to appeal show he intended to deny appeal before he set the hearing?

PARTIES TO THE PROCEEDING

The caption of the case contains the name of the parties. Petitioner is proceeding as permitted under Rule 19.4, RULES OF THE SUPREME COURT, 1980.

The Respondent was Appellee in Appeal No. 79-3569, Fifth Circuit Court of Appeals.

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Amendment

United States Constitution
Fourteenth Amendment 7

Codes

U.S.C.A. 28 § 1331 7
U.S.C.A. 42 § 1983 8

For Statute U.S.C.A. 28 § 1331, See
The Harvard Law Review Vol. 89:922, 1976 p. 934.
Bivins 403 U.S. 388

SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1980

No.

MARJORIE WILLIAMSON,
Petitioner,

vs.

JOHN KIMBROUGH,
Zoning Administrator
City of Dallas, Texas
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FIFTH CIRCUIT

TO THE HONORABLE WARREN E. BURGER, CHIEF JUSTICE OF THE UNITED STATES OF AMERICA, AND TO THE HONORABLE ASSOCIATE JUSTICES OF THE UNITED STATES SUPREME COURT:

Comes now Marjorie Williamson, petitioner, Pro-Se, petitioning this Honorable Court for ar Writ of Certiorari directed to the United States Court of Appeals for the Fifth Circuit, New Orleans, Louisiana to review a void order and void orders entered in Appeal No. 79-3569 in that Court.

OPINION BELOW

No Judgment was entered in CA 3–79–1002 H in the United States District Court for the Northern District of Texas, Dallas Division. The case was not reported.

The Judgment in Appeal No. 79–3569 Affirmed. Order dated August 7, 1980 was stamped DO NOT PUBLISH.

JURISDICTION

The grounds upon which the jurisdiction of this Court is invoked are:

(i) The date of the judgment which is sought to be reviewed was entered in August 7, 1980, copy in the Appendix.

(ii) A Petition for Rehearing was filed, denied October 7, 1980. Copy in the Appendix. A petition for rehearing En Banc was also denied.

(iii) The Motion to Stay the Mandate was granted.

(iv) A Motion for an Extention of Time was granted. Extended to February 12, 1981. A copy of the order is in the Appendix.

The Statutory Provision conferring jurisdiction on this Honorable Court is U.S.C.A. Title 28, Section 1254(1) — See Goett versus Union Carbide Corporation, 361 U.S. 340 (1960).

The other grounds upon which the jurisdiction of this Court is invoked involves the violation of Constitutional Amendments, the Fourteenth Amendment and the Fifth Amendment of the Constitution of the United States, by a Municipal Zoning Administrator.

UNITED STATES CONSTITUTIONAL AMENDMENT INVOLVED

Fourteenth Amendment, Section One:

> "All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATUTES INVOLVED

U.S.C.A. 28 § 1331

§ 1331.

(a) The district courts shall have original jurisdiction of all civil actions wherein the matter in controversy exceeds the sum or value of $10,000, exclusive of interest and costs, and arises under the Constitution, laws, or treaties of the United States.

U.S.C.A. 42 § 1983

§ 1983. Civi l action for deprivaiton of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.
As amended Pub.L. 96-170, § 1, Dec. 29, 1979, 93 Stat. 1284

STATEMENT OF THE CASE

On August 7, 1979, CA 3–79–1002 H was filed as a hybrid class action in the United States District Court for the Northern District of Texas, Dallas Division, Kainz v. Busch Ca. Ill. 194 F 2d 737.

Plaintiffs alleged denial of due process under Constitution Amendment 14. The denial of due process was proved in Plaintiffs' petition. That the denial was intentional is evident from the facts.

Defendant's attorney pleaded municipal immunity for the Zoning Administrator under U.S.C.A. 42§ 1983 on September 24, 1979 in a Motion for Attorney's Fee, in CA 3–79–1002 H, after Monell v. New York Citv Department of Social Services 98 S. Ct. 2018 which overruled Monroe v. Pape had been decided June 6, 1978.

Overall municipal immunity was not protected by the Statute U.S.C.A. 42 § 1983 on September 24, 1979.

There was no judgment in the U.S. District Court in CA 3–79–1002 H for the United States Court of Appeals, Fifth Circuit to affirm.

The United States Court of Appeals for the Fifth Circuit in Appeal No. 79–3569 did not exercise its duty to take jurisdiction on a record in which the Statutes U.S.C.A. 28§ 1331 and U.S.C.A. 42§ 1983 and Constitution Amendment 14 were cited. The claims in the case were not immaterial. They related to the deprivation of property without due process of law. The case should have been heard. Bell v. Hood 327 US 678.

The case was particularly important on account of the claim of immunity for a municipal official, after Monell v. New York City Department of Social Services 98 S.Ct. 2018 had been decided June 6, 1978.

The judgment in the United States Court of Appeals, Fifth Circuit August 7, 1980, was void because the Title of Appellee in the caption on the order was "Etc.", a non suitable entity. May v. Clanton 95 So. 30, 208 ALA 588. 49 C.J.S. § 75 The order Aug. 7, denying a motion to remove appeal no. 79–3569 from the summary calendar was void, caption same as on judgment.

An order entered August 20, 1980 by two Judges in the summary panel who signed the judgment in Appeal No. 79–3569 on August 7, 1980 was void (the third Judge in the panel was on vacation) O'Neal v. Neal Veneering Co. 143 S.E. 381.

The order August 20, 1980 was entered to deny a motion filed in summary calendar record, Appeal No. 79–3569, not in District Court Record CA–3–79–1002 H, Motion filed Aug. 11, 1980, citing Monell 98 S. Ct. 2018 and Owen 100 S. Ct. 1398 decided April 16, 1980.

The two versions of Record in Appeal No. 79-3569 are: 1) the Record No. 79-3569 certified November 25, 1980 and 2) the Summary Calendar Record both show defendant entered as John Kimbrough Etc.,

The District Court Record was not reviewed. The Record showed the intentional denial of due process by defendant in CA 3-79-1002H to petitioner. Intentional deprivation of a constitutional right is important to decisions under U.S.C.A. 42 § 1983 Douthit v. Jones 619 F.2d 527.

Appeal No. 79–3569 was not reviewed.

ARGUMENT

The Federal district court had a duty to take jurisdiction in a case brought under the Fourteenth Amendment of the Constitution of the United States and under U.S.C.A. 28 § 1331 when the amount in controversy was $10,000 for each Plaintiff; and particularly because defendant entered U.S.C.A. 42 § 1983, in the case, a statute which was also jurisdictional Bell v. Hood 327 U.S. 678-686.

> "Where a Right is . . . protected by an express provision of the Federal Constitution, the Courts of the United States are not powerless to enforece such Right. Ickes v. Fox 300 U.S. 82, 81 L. Ed. 525."

The complaint is a damage claim with authority to recover if brought under U.S.C.A. 28 § 1331, or under U.S.C.A. 42 § 1983.

The Federal Courts must look to the way the complaint is drawn.

In this case the Court must look at how and when the defense was presented.

The claim and the defense are specific.

It is particularly shown in plaintiffs pleading that the alleged violations of the Constitution are not immaterial but form rather the sole basis for the relief sought.

The case should be returned to the Fifth Circuit for a hearing for that court to determine any award of damages due to Petitioner.

CONCLUSION

It is respectfully submitted that a Writ of Certiorari should be granted, that the judgment of the United States Court of Appeals for the Fifth Circuit in No. 79-3569 should be reversed and that the United States Court of Appeals for the Fifth Circuit should review District Court Record CA 3-79-1002 H and Summary Calendar Record No. 79-3569 and award damages to Petitioner.

Dallas, Texas
February 11, 1981

Signed: Marjorie Williamson

APPENDIX

1. Copy of Judgement, August 7, 1980, in Appeal No. 79-3569.
2. Excerpt from letter describing order as a Judgment.
3. Copy of order August 7, 1980 denying motion to remove case from the Summary Calendar.- Appeal No. 79-3569
4. Copy of order, August 20, 1980.- Appeal No. 79-3569
5. Copy of order denying rehearing.
6. Copy of order extending time for Certiorari.
7. Copy of Caption CA3-78-1200C.
8. Copy of order CA3-78-1200C.

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 79-3569
Summary Calendar

DO NOT PUBLISH

MARSHALL H. BEYOR, ET AL,
Plaintiffs,

THALIA CLARK and MARJORIE WILLIAMSON,
Plaintiffs-Appellants,

versus

JOHN KIMBROUGH, ETC.,
Defendant-Appellee.

Appeal from the United States District Court for
the Northern District of Texas

(August 7, 1980)

Before HILL, GARZA and THOMAS A. CLARK,
Circuit Judges. PER CURIAM: AFFIRMED
See Local Rule 21.

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

OFFICE OF THE CLERK

AUGUST 7, 1980

MEMORANDUM TO COUNSEL OR PARTIES
LISTED BELOW:

No. 79-3569 — MARSHALL H. BEYER, ET AL, THALIA CLARK and MARJORIE WILLIAMSON, vs. JOHN KIMBROUGH, ETC.

Dear Counsel:

Enclosed is a copy of the Court's Rule 21 Decision this day rendered in the above case which has been entered as the judgment required by Rule 36 of the Federal Rules of Appellate Procedure.

.....

.....

Very truly yours,

GILBERT F. GANUCHEAU,
Clerk

Signed Nell H. Morris
Deputy Clerk

/drg
enc.
cc: Ms. Thalia Clark
Ms. Marjorie Williamson
Mr. Joseph G. Werner

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 79-3569

MARSHALL H. BEYOR, ET AL,
PLAINTIFFS,
THALIA CLARK AND MARJORIE WILLIAMSON,
PLAINTIFFS-APPELLANTS,

VERSUS

JOHN KIMBROUGH, ETC.,
DEFENDANT-APPELLEE.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF TEXAS

BEFORE HILL, GARZA AND THOMAS A. CLARK,
CIRCUIT JUDGES.

BY THE COURT:

IT IS ORDERED that the motion of appellant to remove the referenced case from the summary calendar and assign same for hearing on the Court's oral argument calendar is DENIED.

U.S. COURT OF APPEALS
FILED
AUG. 7, 1980
GILBERT F. GANUCHEAU
CLERK

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 79-3569

MARSHALL H. BEYOR, ET AL,
Plaintiffs,
THALIA CLARK and MARJORIE WILLIAMSON,
Plaintiffs-Appellants,

versus

JOHN KIMBROUGH, Zoning Administrator of the City of Dallas, Texas
Defendant-Appellee.

Appeal from the United States District Court for the Northern District of Texas

---

Before HILL, GARZA and THOMAS A. CLARK*, Circuit Judges.

BY THE COURT:

IT IS ORDERED that appellants' motion for reconsideration of the Court's order of August 7, 1980 is DENIED.

*Judge Thomas A. Clark did not participate in this order since he was out of his chambers on vacation.

U.S. COURT OF APPEALS
FILED
AUG. 20, 1980
GILBERT F. GANUCHEAU
CLERK

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

OFFICE OF THE CLERK

OCTOBER 7, 1980

TO ALL PARTIES LISTED BELOW:

No. 79-3569 — MARSHALL H. BEYOR; THALIA CLARK, ET AL. v. JOHN KIMBROUGH, ETC.

Dear Counsel:

This is to advise that an order has this day been entered denying the petition( ) for rehearing, and no member of the panel nor Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure; Local Fifth Circuit Rule 1G) the petition( ) for rehearing en banc has also been denied.

See Rule 41, Federal Rules of Appellate Procedure for issuance and stay of the mandate.

Very truly yours,

GILBERT F. GANUCHEAU,
Clerk

Signed Sally Hayward
Deputy Clerk

/drg
enc.
cc: Ms. Thalia Clark
Ms. Marjorie Williamson
Mr. Joseph G. Werner

Petition for Rehearing was Filed on September 2, 1980.

SUPREME COURT OF THE UNITED STATES

No. A-496

THALIA CLARK AND MARJORIE WILLIAMSON,

PETITIONERS,

VERSUS

JOHN KIMBROUGH, ZONING ADMINISTRATOR OF DALLAS, TEXAS

ORDER FURTHER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI

UPON CONSIDERATION of the application of counsel petitioner(s),

IT IS ORDERED that the time for filing a petition for writ of certiorari in the above-entitled cause be, and the same is hereby, further extended to and including February 12, 1981.

/s/ Lewis F. Powell, Jr.
Associate Justice of the Supreme Court of the United States

Dated this 24th
day of January, 1981

IN THE
UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

MARJORIE WILLIAMSON,
Plaintiff

vs.

JOHN KIMBROUGH,
ZONING ADMINISTRATOR
OF THE CITY OF DALLAS,
TEXAS
Defendant

CA3-78-1200-C
CIVIL ACTION NO.___

1. ALLEGATION OF JURISDICTION

The action arises under the V and XIV amendments of the Constitution of the United States, U.S.C.A., Title 28 § 1331.

U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FILED
SEPT. 28, 1978
JOSEPH McELROY, JR. CLERK
Signed: Peggy Brannon
Deputy

This Exhibit shows caption and filing data only.

STATEMENT

CA-78-1200C was brought into CA 3-79-1002 H on August 24, 1979 in motion for Attorney's Fee and became a part of CA 3-79-1002 H. It is proper to show the facts herein.

IN THE
UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

MARJORIE WILLIAMSON,
Plaintiff
vs.
JOHN KIMBROUGH,
Defendant

CA3-78-1200-C
CIVIL ACTION NO._____

ORDER OF DISMISSAL

The motion of the Defendent, John Kimbrough, to dismiss this action pursuant to Rule 12(b)(6) for failure to state a claim upon which relief can be granted, is hereby granted and this action is dismissed. All costs are taxed against Plaintiff.

Dated: August 3, 1979

Signed: W.M. Taylor
United States District Judge

2615B/jn

Certified a true copy of an instrument
on file in my office on 1-14-81
JOSEPH McELROY, Jr., Clerk, U.S. District
Court, Northern District of Texas
Signed: Gail O'Neal, Deputy

U.S. DISTRICT COURT
NORTHERN DISTRIC OF TEXAS
FILED
AUG.. 3, 1979
JOSEPH McELROY, JR. CLERK
Signed: B. Gackelf
Deputy

CERTIFICATE OF SERVICE

I, Marjorie Williamson have mailed 40 copies Petition for Writ of Certiorari to the Office of the Clerk of the Supreme Court of the United States this 11th day of February 1981.

Signed: Marjorie Williamson

I, Marjorie Williamson do hereby certify that I have served 3 copies of the Petition to Joseph G. Werner, Office of the City Attorney, City of Dallas, Texas, City Hall, Dallas, Texas, on this 11th day of February 1981.

Signed: Marjorie Williamson

NO. 80-1363

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

MARJORIE WILLIAMSON,

Petitioner,

VS.

JOHN KIMBROUGH, etc.,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

CITY ATTORNEY OF
THE CITY OF DALLAS
JOSEPH G. WERNER
Assistant City Attorney
City Hall 7BN
1500 Marilla Street
Dallas, Texas 75201
(214) 670-3774

NO. 80-1363

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

MARJORIE WILLIAMSON,

Petitioner,

VS.

JOHN KIMBROUGH, etc.,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

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CITY ATTORNEY OF
THE CITY OF DALLAS
JOSEPH G. WERNER
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Article 1011f, Tex.Rev.Civ.Stat. ... 2, 3

NO. 80-1363

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

MARJORIE WILLIAMSON,

Petitioner,

VS.

JOHN KIMBROUGH, etc.,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

TO THE HONORABLE JUSTICES OF SAID COURT:

STATEMENT OF THE CASE

This is a civil rights case in which a landowner, pro se, claimed that the city zoning administrator deprived her of constitutionally protected rights because he allegedly told her she could not appeal a decision of the zoning commission.

The complaint contained allegations that the landowner sought to have her property rezoned, that the request was denied by the city's zoning commission, that the landowner presented the zoning adminstrator with a request for a hearing before the city council,[1] and that the zoning administrator told the landowner there could be no appeal at that time because interested parties had

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1 Texas law requires that zoning changes be made by a city council only after the council has considered the recommendation of the city's zoning commission. Art. 1011f, Tex.Rev.Civ. Stat.Ann.

not been notified.[2] There was no allegation that the landowner petitioned the city council to overrule the decision of the planning and zoning commission.

The district court dismissed the complaint for failure to state a claim upon which relief could be granted, and the court of appeals affirmed. The landowner petitions this Court for writ of certiorari.

SUMMARY OF ARGUMENT

An allegation that the zoning administrator supplied a landowner with bad advice, if true, does not rise to the level of a constitutional tort.

ARGUMENT

A landowner sued alleging only that the zoning administrator told her she

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2 Texas law requires written notice of a proposed zoning change to owners of real property lying within 200 feet of the property on which the change is sought. Art. 1011f, Tex.Rev.Civ.Stat. Ann.

could not appeal an adverse recommendation of the city's planning and zoning commission. That allegation, if true, amounts to no more than a claim that the zoning administrator gave her bad advice concerning the proper procedures to be followed in appealing from a decision of the commission. That allegation, taken as true for the purposes of Rule 12(b)(6), does not rise to the level of a constitutional deprivation, and the landowner failed to state a claim upon which relief can be granted. See, e.g., Wishart v. McDonald, 500 F.2d 1110, 1115 (1st Cir. 1974), Palmigiano v. Mullen, 491 F.2d 978, 980 (1st Cir. 1974). The district court correctly dismissed the landowner's complaint, and the court of appeals correctly affirmed.

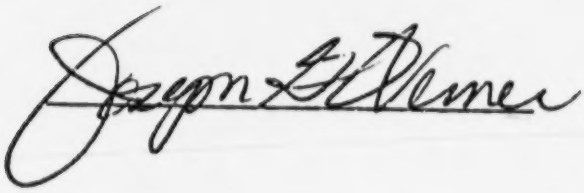
The landowner's references to this Court's decisions in Monell v. Department of Social Services, 436 U.S 658 (1978) and Owen v. City of Independence, 445 U.S. 622 (1980), are inapposite because the complaint contained no allegations against the municipality.

CONCLUSION AND PRAYER

The landowner's pro se suit appears to have been based upon her sincere misunderstanding of both the facts and the law, and the allegations of her complaint did not rise to the level of a constitutional deprivation. The district court correctly dismissed her complaint for failure to state a claim upon which relief could be granted, and the court of appeals correctly affirmed that dismissal. The petition for writ of certiorari, therefore, should be denied.

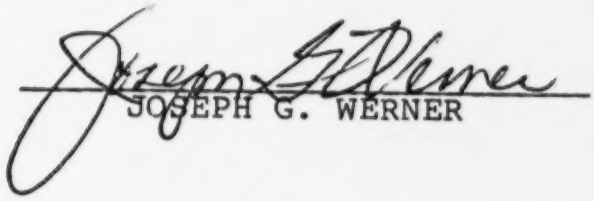
Respectfully submitted,

CITY ATTORNEY OF
THE CITY OF DALLAS
JOSEPH G. WERNER
Assistant City Attorney
City Hall 7BN
1500 Marilla Street
Dallas, Texas 75201
670-3774



CERTIFICATE OF SERVICE

A copy of the foregoing brief was served by mail on Marjorie Williamson, petitioner pro se, on the 18th day of March, 1981.



JOSEPH G. WERNER

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